

03-06-06

AF
JFW

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

Approved for use through 07/31/2008, OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	10 / 021, 656
	Filing Date	12 / 12 / 2001
	First Named Inventor	GARY C. JOHNSON
	Art Unit	3681
	Examiner Name	Clrk Wright
Total Number of Pages in This Submission	Attorney Docket Number	

ENCLOSURES (Check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input checked="" type="checkbox"/> Amendment/Reply <input checked="" type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input checked="" type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance communication to Technology Center (TC) <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input checked="" type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below):
Remarks: <i>Immediate Action Requested. Contents: CLAIMS; 17 and 18 (2 pages), 2 Replacement Drawings, Remarks (2 pgs) Substitute Description (2 pages) New Matter statement (3 copies) certificate of mailing</i>		
SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT		
Firm or Individual name	Gary C. Johnson	
Signature	<i>[Signature]</i>	
Date	3-2-06	

CERTIFICATE OF TRANSMISSION/MAILING			
I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.			
Typed or printed name	GARY C. JOHNSON		
Signature	<i>[Signature]</i>	Date	3-2-06

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

BEST AVAILABLE COPY

6



Certificate of Mailing under 37 CFR 1.8

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

on 3-2-06
Date



Signature

Gary C. Johnson

Typed or printed name of person signing Certificate

Registration Number, if applicable

(313) 566-0106

Telephone Number

Note: Each paper must have its own certificate of mailing, or this certificate must identify each submitted paper.

CLAIMS; 17 and 18 (2pgs) 2 replacement Drawings, Remarks (2pgs) substitute Description with deleted and old version copies, New Matter Statement, Transmittal Form.

This collection of information is required by 37 CFR 1.8. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.8 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

6

2. a new differential having: a pinion differential incorporated with planetary gearing, the planetary gearing having a rotatable case/fixture of it's own.

3. a new differential having: a pinion differential incorporated with planetary gearing, the planetary gearing having a rotatable case/fixture of it's own, the said case being stationary/fixed to one of the axle level gears.

Description

BACKGROUND OF THE INVENTION

[0001] This invention relates to a better vehicle differential, that prevents wheel slippage and wheel immobility.

[0002] On heavy-duty vehicles, limited slip differentials are not practicle. Heavy-duty vechles often use locking mechanisms to keep both axle sections rotating continuously, which is not always practical either, variability is disrupted

[0003] This new differential can use gears for drive force.

SUMMARY OF THE INVENTION

~~[0004] The new differential provides positive rotation to each axle section of a vehicle, under all road conditions, when the vehicle is on a level surface.~~

~~[0005] It will still allow variability between axle sections when needed on a curved path, but only allowing inversely proportional rotation, which is one of the advantages of the new differential.~~

~~[0006] The new differential, when used one for each set of drive axle sections, and being inversely installed, having the two different drive mechanism of one differential, diametrically opposed to the two different drive mechanisms of the other differential, will only allow diametrical wheel/axle section roll back. Therefor at least one wheel on the left or right of the vehicle will have constant rotation capability.~~

BRIEF DESCRIPTION OF THE DRAWINGS

[0007] FIG. 1 is a cross sectional view of the said new differential.

DETAILED DESCRIPTION OF THE DRAWINGS

[0008] In FIG. 1, the support member 1 supports the central case member 2, the case member 2 is the final resting place for pinion shafts 3 and 4. the axle shaft 5, has a gear 6 splined to it's end. The gear 7 is rotatively stationary to the pinion case 8, being splined to the shaft 19. The shaft 19 being fixed to the central case member 2. The planetary gear case 9, having an axle shaft 10 splined to one of it's axial openings. The gear case 9 having a bevel gear 11 fixed/splined to it's other end. A bevel gear 12 being splined to axle shaft 5. the pinion gears 13 and 14 being rotatively stationary to the main case 8. The gear case 9, having an axle shaft 10 splined to one of it's axial openings. The gear case 9 having a bevel gear 11 fixed/splined to it's other end. The gear case 9 having orbital gears 15 and 16 rotatively stationary to the said case 9 by way of shafts 17 and 18 respectively. The end plate 20 is for the entrance

2. a new differential having: a pinion differential incorporated with planetary gearing, the planetary gearing having a rotatable case/fixture of it's own.

3. a new differential having: a pinion differential incorporated with planetary gearing, the planetary gearing having a rotatable case/fixture of it's own, the said case being stationary/fixed to one of the axle bevel gears.

Description

BACKGROUND OF THE INVENTION

[0001] This invention relates to a better vehicle differential, that prevents wheel slippage and wheel immobility.

[0002] On heavy-duty vehicles, limited slip differentials are not practicle. Heavy-duty vechles often use locking mechanisms to keep both axle sections rotating continuously, which is not always practical either, variability is disrupted

[0003] This new differential can use gears for drive force.

SUMMARY OF THE INVENTION

[0004] The new differential provides positive rotation to each axle section of a vehicle, under all road conditions, when the vehicle is on a level surface.

[0005] It will still allow variability between axle sections when needed on a curved path, but only allowing inversely proportional rotation, which is one of the advantages of the new differential.

[0006] The new differential, when used one for each set of drive axle sections, and being inversely installed; having the two different drive mechanism of one differential, diametrically opposed to the two different drive mechanisms of the other differential, will only allow diametrical wheel/axle section roll-back. Therefor at least one wheel on the left or right of the vehicle will have constant rotation capability.

BRIEF DESCRIPTION OF THE DRAWINGS

[0007] FIG. 1 is a cross sectional view of the said new differential.

DETAILED DESCRIPTION OF THE DRAWINGS

[0008] In FIG. 1, the support member 1 supports the central case member 2, the case member 2 is the final resting place for pinion shafts 3 and 4. the axle shaft 5, has a gear 6 splined to it's end. The gear 7 is rotatively stationary to the pinion case 8, being splined to the shaft 19. The shaft 19 being fixed to the central case member 2. The planetary gear case 9, having an axle shaft 10 splined to one of it's axial openings. The gear case 9 having a bevel gear 11 fixed/splined to it's other end. A bevel gear 12 being splined to axle shaft 5. the pinion gears 13 and 14 being rotatively stationary to the main case 8. The gear case 9, having an axle shaft 10 splined to one of it's axial openings . The gear case 9 having a bevel gear 11 fixed/splined to it's other end. The gear case 9 having orbital gears 15 and 16 rotatively stationary to the said case 9 by way of shafts 17 and 18 respectively. The end plate 20 is for the entrance

app #10/021,656

SUMMARY OF THE INVENTION

~~The new differential provides positive rotation to each axle section of a vehicle, under all road conditions, when the vehicle is on a level surface.~~



~~It will still allow variability between axle sections when needed on a curved path, but only allowing inversely proportional rotation, which is one of the advantages of the new differential.~~



~~The new differential, when used one for each set of drive axle sections, and being inversely installed; having the two different drive mechanism of one differential, diametrically opposed to the two different drive mechanisms of the other differential, will only allow diametrical wheel/axle section roll back. Therefor at least one wheel on the left or right of the vehicle will have constant rotation capability.~~



1 on 1 left

SUMMARY OF THE INVENTION

The new differential provides positive rotation to each axle section of a vehicle, under all road conditions, when the vehicle is on a level surface. (✓)

It will still allow variability between axle sections when needed on a curved path, but only allowing inversely proportional rotation, which is one of the advantages of the new differential. ✓✓

The new differential, when used one for each set of drive axle sections, and being inversely installed; having the two different drive mechanism of one differential, diametrically opposed to the two different drive mechanisms of the other differential, will only allow diametrical wheel/axle section roll-back. Therefor at least one wheel on the left or right of the vehicle will have constant rotation capability. (⊙)

1 on 1 left



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

OA

6

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/021,656	12/12/2001	Gary Carlton Johnson		4604

7590
Gary C Johnson
2064 Lafayette
Detroit, MI 48207

12/06/2005

EXAMINER

WRIGHT, DIRK

ART UNIT PAPER NUMBER

3681

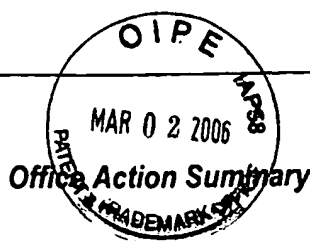
DATE MAILED: 12/06/2005

1
12-06-05

Please find below and/or attached an Office communication concerning this application or proceeding.

note: see; also 35 USC 120
National Filing Priority.

note: Mine in a subclass of it's own
It is a structural claim(s),
that is only necessary.



Application No. 10/021,656	Applicant(s) JOHNSON, GARY CARLTON	
	Examiner Dirk Wright	Art Unit 3681

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15 and 16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15 and 16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 November 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Amendment

Applicant's Response filed November 17, 2005 has been carefully considered. The examiner's response to applicant's arguments can be found under the heading "*Response to Arguments*".

The amendment filed May 23, 2005 continues to be objected under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows:

The "Detailed Description of the Invention" filed May 23, 2005, intended by applicant to replace his original "Detailed Description of the Drawings", contains new matter. The subject matter not supported by the original application, and not inherent in the original drawings, claims or description, includes the following:

Page 1, lines 7 and 8: "(4) anti roll-back means of the drive wheels/axle sections on an inclined drive surface"

Page 1, line 14: "by way of the outwardly protruding axial stock of case (8)"

Page 3, lines 9-10: "The axle section of axle 10; being/beginning at 0 rpm."

Page 3, lines 11-12: "The said new differential is designed to automatically go into a gear-locking effect/mode. The above said axle section, of axle 10; being/beginning at 0 rpm."

Page 4, lines 2-3: "Herein the axle section of axle 5; being/beginning at 0 rpm."

Page 4, lines 4-6: "In the above said circumstance, the said; new differential is designed to automatically go into a gear-locking effect/mode. Whereas gear 6, of axle 5, is also at 0 rpm."

Page 4, line 8: "Whereas gear 12, of axle 5, is also at 0 rpm;"

Page 4 line 11: "Hereby causing the afore said; gear-locking effect/mode."

Page 4, lines 14-16: "(d) wherein traction is lost by one of either axle section; on an inclined drive surface. Herein a situation called; "vehicle roll-back" will occur. The afore mentioned gear-locking effects/modes;"

None of these features were present in the originally filed application, and are not inherent from the original claims, specification or drawing.

In the claims, the following is deemed to be new matter:

In claim 15:

line 4: "a means of only allowing/forcing both drive axles/wheels to rotate in unison;"

line 7: "...disallows the over-spinning of the both drive wheels..."

line 15: "the said differential also having inherent Posi-Traction and an inherent anti roll-back features for the vehicle when in a racing/climbing mode;"

line 18: "...because of the roll-over tendencies of these said vehicles,"; and

line 30: "a smooth rounded inner surface throughout it's central stock;"

None of these claimed features are supported by, or inherent from, the original specification, claims or drawing.

The proposed replacement drawings were received on November 12, 2004. These drawings are unacceptable and will not be entered because they contain new matter. The new matter includes the added support stock (not labeled) protruding from axial sides of the differential case (8).

Applicant is required to cancel the new matter in the reply to this Office Action.

Specification Objected

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: In claim 15:

line 20: "a differential drive case";

line 21: "a first and second planetary differential gear";

line 24: "a support structure/drive case";

line 24: "two sun gears";

line 24: "at least one planet wheel"; ✓

line 25: "one input shaft";

line 25: "two output shafts";

line 51: "freely rotatable bevel pinion"; and

line 53: "differential side bevel gears".

None of these phrases are found in the original specification, claims or drawing.

Claims Rejected

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 15 and 16 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In claim 15:

Art Unit: 3681

line 4: "a means of only allowing/forcing both drive axles/wheels to rotate in unison,";

line 7: "...disallows the over-spinning of the both drive wheels...";

line 15: "the said differential also having inherent Posi-Traction and an inherent anti roll-back features for the vehicle when in a racing/climbing mode,";

line 18: "...because of the roll-over tendencies of these said vehicles,"; and

line 30: "a smooth rounded inner surface throughout it's central stock,".

None of these claimed features are supported by, or inherent from, the original specification, claims or drawing and therefore it appears that applicant did not possess these claimed features at the time this application was filed.

Priority

Applicant's claim for the benefit of a prior-filed application under 35 U.S.C. 119(e) or under 35 U.S.C. 120, 121, or 365(c) is acknowledged. Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 119(e) as follows:

The later-filed application must be an application for a patent for an invention which is also disclosed in the prior application (the parent or original nonprovisional application or provisional application). The disclosure of the invention in the parent application and in the later-filed application must be sufficient to comply with the requirements of the first paragraph of 35 U.S.C. 112. See *Transco Products, Inc. v. Performance Contracting, Inc.*, 38 F.3d 551, 32 USPQ2d 1077 (Fed. Cir. 1994).

The disclosure of the prior-filed application, Application No. 60/254,901, fails to provide adequate support or enablement in the manner provided by the first paragraph of 35 U.S.C. 112

← see pg 9
also
Equivalents

see next pg. → Shaft 19

Art Unit: 3681

for claims 15 and 16 of this application. The provisional application does not show the same differential as applicant has claimed; in particular at least the input shaft 19, as recited in the claims, is not shown in the provisional drawings.

Response to Arguments

Applicant's arguments filed November 17, 2005 have been fully and carefully considered.

In response to his point (1) on page 1 of his Remarks - A, applicant states that he was never informed that his application was missing a required part. The examiner never required applicant to submit a new "Detailed Description of the Invention". Applicant volunteered it on March 16, 2004. No marked up copy is required, however the additional of new matter to the specification is prohibited by statute. The examiner has suggested that applicant hire an attorney, and also provided an outline of a proper patent application in the Action of June 28, 2005.

In response to his point (2) on page 1 of his Remarks - A, applicant states that the examiner was in error in his rejection under 35 U.S.C. 112, first paragraph. The rejection has been corrected.

In response to his point (1) on page 2 of his Remarks - B, applicant objects to the examiner's statement: "have a function where an axle was rotated at 0 rpm". The basis for this statement is from Applicant's Detailed Description of the Invention, page (3), lines 10, and 12, and page (4) lines 3, 6, and 8.

In response to his point (2) of page 2 of his Remarks - B, applicant appears to argue that the fact that he did not specify that the input shaft 19 had "a smooth rounded inner surface" and that his drawings did not exclude such a feature, that the addition of this feature should not be

new matter. This is not found persuasive because the characteristic texture of the inner surface of the shaft is not evident from the drawings or the specification, and adding such a feature would therefore be new matter.

In response to his point (3) of page 2 of his Remarks – B, applicant appears to be asserting that because the “outward protruding axial stock” is obvious to one of ordinary skill in this art, it can’t be considered new matter to add it to the drawing. This is not found persuasive because every change made to the drawings that is not specifically and explicitly supported by the specification is considered new matter.

In response to his Remarks – C concerning the replacement drawing, applicant appears to be stating that because the examiner has objected to the drawings again, applicant feels obligated to assert that he has support for the bevel gear 12 being splined to shaft 5. Since the examiner does not maintain that objection about the drawings, applicant’s argument appears to be moot.

In response to his Remarks – C concerning the inherent functions, theories or advantages, MPEP 2163.07(a), applicant appears to be stating that he has already disclosed the newly recited features that the examiner has deemed as new matter, and therefore the newly recited features are not new matter. He goes on to cite apparent phrases from his original disclosure in support of his position. This is not found persuasive because it is not clear to which rejection or objection his arguments pertain. The fact that his original paragraph [0003] recited gears does not mean that he has antecedents for: In claim 15:

line 20: “a differential drive case”;

line 21: “a first and second planetary differential gear”;

line 24: “a support structure/drive case”;

“mention”

find equivalents

Drawings
changes vis.
drawings corrections

✓✓
obvious
error

↓
perfectly
feature

✓✓

outward
protruding
stock

Art Unit: 3681

line 24: "two sun gears";

line 24: "at least one planet wheel";

line 25: "one input shaft";

line 25: "two output shafts";

line 51: "freely rotatable bevel pinion"; and

line 53: "differential side bevel gears".

*should say
a first and a
second output shaft.*

The recitation from paragraph [0006] "...will only allow diametrical wheel/axle section roll-back" does not appear to support an anti-roll back feature found in claim 15, line 15. The phrase is confusing and indefinite. Further, his recitation of the phrases from the other paragraphs does not appear to support: In claim 15:

line 4: "a means of only allowing/forcing both drive axles/wheels to rotate in unison";

line 7: "...disallows the over-spinning of the both drive wheels...";

line 15: "the said differential also having inherent Posi-Traction and an inherent anti roll-back features for the vehicle when in a racing/climbing mode,"; and

line 18: "...because of the roll-over tendencies of these said vehicles,".

Applicant has made a number of requests on page 4 of his Response. Request (1) has been complied herewith. Request (2) does not appear to be a request. Request (3) is confusing because no claim in this application has been found to be allowable. In order for an applicant's invention, as defined by his claims, to be deemed allowable, it must not be rejected under any statute. Such is not the case in this application. The examiner stated in the Action of June 28, 2005:

Art Unit: 3681

"A determination as to the patentability of the claims over the prior art cannot be determined until the rejection under 35 U.S.C. 112, second paragraph, is overcome, as well as the objections to the amendment and drawing change are overcome, however applicant appears to be claiming enough subject matter in clear enough language that it appears that none of the cited prior art anticipates or renders obvious applicant's invention."

✓
was
not
restated

It is also not clear as to why applicant would assume that an application becomes "Special" based upon the above paragraph. This application has been treated with the proper expediency ever since it was filed.

✓
lie

As to Applicant's Request (4), applicant should know that provisional applications normally expire after 12 months unless applicant takes the required steps to make the application non-provisional. See 35 U.S.C. 111(b)(5) and MPEP 201.04(b). Also see MPEP 201.11 for the requirements for benefiting from a claim of priority under 35 U.S.C. 119(e). In particular, applicant did not comply with the requirement that the later-filed application must contain a reference to the prior-filed application in the first sentence(s) of the specification or in an application data sheet for a benefit claim under 35 U.S.C. 120, 121, or 365(c), and also for a benefit claim under 35 U.S.C. 119(e), and applicant also did not comply with the requirement that if the later-filed application is a utility or plant application filed on or after November 29, 2000, the reference to the prior-filed application must be submitted within the time period set forth in 37 CFR 1.78(a) (e.g., during the pendency of the later-filed application and within the later of 4 months from the actual filing date of the later-filed application or 16 months from the filing date of the prior-filed application) for a benefit claim under 35 U.S.C. 120, 121, or 365(c), and also for benefit claim under 35 U.S.C. 119(e). Applicant's Request (4) is therefore denied.

✓
provi.

get first
ADS

Art Unit: 3681

In regards to applicant's preamble, it is not clear what exactly applicant is asserting at the bottom of page 4.

In regards to applicant's Statement of Incorporation by Reference on page 5 of his Response, the request is denied because it would introduce new matter into the disclosure. The disclosure of the prior-filed application, Application No. 60/254,901, fails to provide adequate support or enablement in the manner provided by the first paragraph of 35 U.S.C. 112 for claims 15 and 16 of this application. The provisional application does not show the same differential as applicant has claimed; in particular at least the input shaft 19, as recited in the claims, is not shown in the provisional drawings.

Drawing
are ref. for
all they
contain
+
1st ADS
+
706.03

Applicant's "Statement of Irreparable Damage" is noted.

Suggested Allowable Claim

This application would be allowable if the following claim were added by amendment, and if the original "Summary of the Invention" were amended to contain all of the language of the below claim, if the original "Detailed Description of the Drawing" were amended to provide the proper antecedents for the new claim language, if claims 15 and 16 were cancelled, and if applicant dropped all previous amendments, drawing changes, requests and statements:

"A differential comprising:

a rotatable housing (8);

at least one pinion shaft (3) fixed to said housing;

one bevel pinion gear (13) rotatably mounted on said pinion shaft;

said one bevel pinion gear meshing with first (12) and second (11) side bevel

gears;

↓ a differential gear and at least one planetary gear, said differential gear (including) comprising: ↓

use means

Application/Control Number: 10/021,656

Page 11

Art Unit: 3681

first (5) and second (10) coaxial output shafts rotatable supported by the housing; ^{in a} false
said first side bevel gear (12) and a first sun gear (6) rotatably fixed to said first

output shaft;

said second side bevel gear (11) rotatably fixed to a planetary gear carrier (9);

a second sun gear (7) rotatably fixed to a hollow intermediate shaft (19);

said intermediate shaft disposed coaxial with the first output shaft and rotatably

fixed to said at least one pinion shaft (3);

at least one planet gear (16) rotatably supported by a planet gear shaft (17) and
meshing with both said first and second sun gears;

said planet gear shaft supported by said planet carrier;

and said second output shaft (10) rotatably fixed to said planet carrier."

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time
policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE
MONTHS from the mailing date of this action. In the event a first reply is filed within TWO
MONTHS of the mailing date of this final action and the advisory action is not mailed until after
the end of the THREE-MONTH shortened statutory period, then the shortened statutory period
will expire on the date the advisory action is mailed, and any extension fee pursuant to 37
CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

recite v.s.

cite - quote

Art Unit: 3681

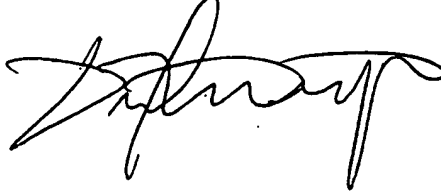
however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dirk Wright whose telephone number is 571-272-7098. The examiner can normally be reached on Monday through Friday, 8AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor can be reached on 571-272-7095. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, ⁶contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Dirk Wright
Primary Examiner
Art Unit 3681



DW
Monday, November 28, 2005



United States Patent and Trademark Office

PATENTS

Home | Site Map | Search | FAQ | Glossary | Guides | Contacts | eBusiness | eBiz alerts | News | Help

Patents >

Go to MPEP - Table of Contents

No Equivalents

browse before

904.01(b) Equivalents - 900 Prior Art, Classification, >and< Search

904.01(b) Equivalents

All subject matter that is the equivalent of the subject matter as defined in the claim, even though specifically different from the definition in the claim, must be considered unless expressly excluded by the claimed subject matter. See MPEP § 2181 - § 2184 for a discussion of equivalents when a claim employs means or step plus function terminology.

browse after

KEY: =online business system =fees =forms =help =laws/regulations =definition (glossary)

The Inventors Assistance Center is available to help you on patent matters. Send questions about USPTO programs and services to the USPTO Contact Center (UCC). You can suggest USPTO webpages or material you would like featured on this section by E-mail to the webmaster@uspto.gov. While we cannot promise to accommodate all requests, your suggestions will be considered and may lead to other improvements on the website.

[HOME](#) | [SITE INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [HELP](#) | [PRIVACY POLICY](#)

Last Modified: 12/07/2005 06:33:58

Go to MPEP - Table of Contents



Patents >

Go to MPEP - Table of Contents

browse before

2163.04 Burden on the Examiner with Regard to the Written Description Requirement - 2100 Patentability

2163.04 Burden on the Examiner with Regard to the Written Description Requirement

The inquiry into whether the description requirement is met must be determined on a case-by-case basis and is a question of fact. *In re Wertheim*, 541 F.2d 257, 262, 191 USPQ 90, 96 (CCPA 1976). A description as filed is presumed to be adequate, unless or until sufficient evidence or reasoning to the contrary has been presented by the examiner to rebut the presumption. See, e.g., *In re Marzocchi*, 439 F.2d 220, 224, 169 USPQ 367, 370 (CCPA 1971). The examiner, therefore, must have a reasonable basis to challenge the adequacy of the written description. The examiner has the initial burden of presenting by a preponderance of evidence why a person skilled in the art would not recognize in an applicant's disclosure a description of the invention defined by the claims. *Wertheim*, 541 F.2d at 263, 191 USPQ at 97.

I. STATEMENT OF REJECTION REQUIREMENTS

In rejecting a claim, the examiner must set forth express findings of fact which support the lack of written description conclusion (see MPEP § 2163 for examination guidelines pertaining to the written description requirement). These findings should:

(A) Identify the claim limitation at issue; and

(B) Establish a *prima facie* case by providing reasons why a person skilled in the art at the time the application was filed would not have recognized that the inventor was in possession of the invention as claimed in view of the disclosure of the application as filed. A general allegation of "unpredictability in the art" is not a sufficient reason to support a rejection for lack of adequate written description. A simple statement such as "Applicant has not pointed out where the new (or amended) claim is supported, nor does there appear to be a written description of the claim limitation '____' in the application as filed." may be sufficient where the claim is a new or amended claim, the support for the limitation is not apparent, and applicant has not pointed out where the limitation is supported.

When appropriate, suggest amendments to the claims which can be supported by the application's written description, being mindful of the prohibition against the addition of new matter in the claims or description. See *Rasmussen*, 650 F.2d at 1214, 211 USPQ at 326.

II. RESPONSE TO APPLICANT'S REPLY

Upon reply by applicant, before repeating any rejection under 35 U.S.C. 112, para. 1, for lack of written description, review the basis for the rejection in view of the record as a whole, including amendments, arguments, and any evidence submitted by applicant. If the whole record now demonstrates that the written description requirement is satisfied, do not repeat the rejection in the next Office action. If the record still does not demonstrate that the written description is adequate to support the claim(s), repeat the rejection under 35 U.S.C. 112, para. 1, fully respond to applicant's rebuttal arguments, and properly treat any further showings submitted by applicant in the reply. When a rejection is maintained, any affidavits relevant to the 35 U.S.C. 112, para. 1, written description requirement, must be thoroughly analyzed and discussed in the next Office action. See *In re Alton*, 76 F.3d 1168, 1176, 37 USPQ2d 1578, 1584 (Fed. Cir. 1996).

browse after

KEY: =online business system =fees =forms =help =laws/regulations =definition (glossary)

The Inventors Assistance Center is available to help you on patent matters. Send questions about USPTO programs and services to the USPTO Contact Center (UCC). You can suggest USPTO webpages or material you would like featured on this section by E-mail to the webmaster@uspto.gov. While we cannot promise to accommodate all requests, your suggestions will be considered and may lead to other improvements on the website.



United States Patent and Trademark Office

PATENTS

[Home](#) | [Site Index](#) | [Search](#) | [FAQ](#) | [Glossary](#) | [Guides](#) | [Contacts](#) | [eBusiness](#) | [eBiz alerts](#) | [News](#) | [Help](#)[Patents > 707.07\(e\) Note All Outstanding Requirements - 700 Examination of Applications](#)[Go to MPEP - Table of Contents](#)

browse before

707.07(e) Note All Outstanding Requirements - 700 Examination of Applications

707.07(e) Note All Outstanding Requirements

In taking up an amended application for action the examiner should note in every letter all the requirements outstanding against the application. Every point in the prior action of an examiner which is still applicable must be repeated or referred to, to prevent the implied waiver of the *requirement*. Such requirements include requirements for information under 37 CFR 1.105 and MPEP § 704.10; however the examiner should determine whether any such requirement has been satisfied by a negative reply under 37 CFR 1.105(a)(3).

As soon as allowable subject matter is found, correction of all informalities then present should be *required*.

browse after

KEY: =online business system =fees =forms =help =laws/regulations =definition (glossary)

The Inventors Assistance Center is available to help you on patent matters. Send questions about USPTO programs and services to the USPTO Contact Center (UCC). You can suggest USPTO webpages or material you would like featured on this section by E-mail to the webmaster@uspto.gov. While we cannot promise to accommodate all requests, your suggestions will be considered and may lead to other improvements on the website.

[HOME](#) | [SITE INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [HELP](#) | [PRIVACY POLICY](#)

Last Modified: 09/29/2004 09:35:25

[Go to MPEP - Table of Contents](#)

this in reference
particularary to 35 USC 112
first paragraph

[Patents >](#)[Go to MPEP - Table of Contents](#)

use with 706.03

[browse before](#)

2164.08(c) Critical Feature Not Claimed - 2100 Patentability

2164.08(c) Critical Feature Not Claimed

A feature which is taught as critical in a specification and is not recited in the claims should result in a rejection of such claim under the enablement provision section of 35 U.S.C. 112. See *In re Mayhew*, 527 F.2d 1229, 1233, 188 USPQ 356, 358 (CCPA 1976). In determining whether an unclaimed feature is critical, the entire disclosure must be considered. Features which are merely preferred are not to be considered critical. *In re Goffe*, 542 F.2d 564, 567, 191 USPQ 429, 431 (CCPA 1976).

Limiting an applicant to the preferred materials in the absence of limiting prior art would not serve the constitutional purpose of promoting the progress in the useful arts. Therefore, an enablement rejection based on the grounds that a disclosed critical limitation is missing from a claim should be made only when the language of the specification makes it clear that the limitation is critical for the invention to function as intended. Broad language in the disclosure, including the abstract, omitting an allegedly critical feature, tends to rebut the argument of criticality.

[browse after](#)

KEY: =online business system =fees =forms =help =laws/regulations =definition (glossary)

The **Inventors Assistance Center** is available to help you on patent matters. Send questions about USPTO programs and services to the **USPTO Contact Center (UCC)**. You can suggest USPTO webpages or material you would like featured on this section by E-mail to the webmaster@uspto.gov. While we cannot promise to accommodate all requests, your suggestions will be considered and may lead to other improvements on the website.

[|.HOME](#) | [| SITE INDEX](#) | [| SEARCH](#) | [| eBUSINESS](#) | [| HELP](#) | [| PRIVACY POLICY](#)

Last Modified: 12/07/2005 06:41:25

[Go to MPEP - Table of Contents](#)

2.

706.03 ; Rejections not based on prior art

3. New combination

4. Single Embodiment



[Go to MPEP - Table of Contents](#)

[browse before](#)

706.03 Rejections Not Based on Prior Art - 700 Examination of Applications

706.03 Rejections Not Based on Prior Art

The primary object of the examination of an application is to determine whether or not the claims are patentable over the prior art. This consideration should not be relegated to a secondary position while undue emphasis is given to nonprior art or "technical" rejections. Effort in examining should be concentrated on truly essential matters, minimizing or eliminating effort on technical rejections which are not really critical. Where a major technical rejection is proper (e.g., lack of proper disclosure, undue breadth, utility, etc.) such rejection should be stated with a full development of the reasons rather than by a mere conclusion coupled with some stereotyped expression.

Rejections based on nonstatutory subject matter are explained in **MPEP § 706.03(a)**, **§ 2105**, **§ 2106 - § 2106.02**, and **§ 2107 - § 2107.02**. Rejections based on subject matter barred by the Atomic Energy Act are explained in **MPEP § 706.03(b)**. Rejections based on duplicate claims are addressed in **MPEP § 706.03(k)**, and double patenting rejections are addressed in **MPEP § 804**. See **MPEP § 706.03(o)** for rejections based on new matter. Foreign filing without a license is discussed in **MPEP § 706.03(s)**. Disclaimer, after interference or public use proceeding, *res judicata*, and reissue are explained in **MPEP § 706.03(u) to § 706.03(x)**. Rejections based on **35 U.S.C. 112** are discussed in **MPEP § 2161 - § 2174**. IF THE LANGUAGE IN THE FORM PARAGRAPHS IS INCORPORATED IN THE OFFICE ACTION TO STATE THE REJECTION, THERE WILL BE LESS CHANCE OF A MISUNDERSTANDING AS TO THE GROUNDS OF REJECTION.

[browse after](#)

KEY: =online business system =fees =forms =help =laws/regulations =definition (glossary)

The Inventors Assistance Center is available to help you on patent matters. Send questions about USPTO programs and services to the USPTO Contact Center (UCC). You can suggest USPTO webpages or material you would like featured on this section by E-mail to the webmaster@uspto.gov. While we cannot promise to accommodate all requests, your suggestions will be considered and may lead to other improvements on the website.



[Go to MPEP - Table of Contents](#)

[browse before](#)

2163.07 Amendments to Application Which Are Supported in the Original Description [R-1] - 2100 Patentability

2163.07 Amendments to Application Which Are Supported in the Original Description [R-1]

Amendments to an application which are supported in the original description are NOT new matter.

I. REPHRASING

Mere rephrasing of a passage does not constitute new matter. Accordingly, a rewording of a passage where the same meaning remains intact is permissible. *In re Anderson*, 471 F.2d 1237, 176 USPQ 331 (CCPA 1973). The mere inclusion of dictionary or art recognized definitions known at the time of filing an application would not be considered new matter. If there are multiple definitions for a term and a definition is added to the application, it must be clear from the application as filed that applicant intended a particular definition, in order to avoid an issue of new matter and/or lack of written description. See, e.g., *Schering Corp. v. Amgen, Inc.*, 222 F.3d 1347, 1352-53, 55 USPQ2d 1650, 1654 (Fed. Cir. 2000). In *Schering*, the original disclosure drawn to recombinant DNA molecules utilized the term "leukocyte interferon." Shortly after the filing date, a scientific committee abolished the term in favor of "IFN-(a)," since the latter term more specifically identified a particular polypeptide and since the committee found that leukocytes also produced other types of interferon. The court held that the subsequent amendment to the specification and claims substituting the term "IFN-(a)" for "leukocyte interferon" merely renamed the invention and did not constitute new matter. The claims were limited to cover only the interferon subtype coded for by the inventor's original deposits.

II. OBVIOUS ERRORS

An amendment to correct an obvious error does not constitute new matter where one skilled in the art would not only recognize the existence of error in the specification, but also the appropriate correction. *In re Oda*, 443 F.2d 1200, 170 USPQ 268 (CCPA 1971).

Where a * foreign priority document under 35 U.S.C. 119 is of record in the >U.S.< application file, applicant may not rely on the disclosure of that document to support correction of an error in the pending >U.S.< application. *Ex parte Bondiou*, 132 USPQ 356 (Bd. App. 1961). This prohibition applies regardless of the language of the foreign priority documents because a claim for priority is simply a claim for the benefit of an earlier filing date for subject matter that is common to two or more applications, and does not serve to incorporate the content of the priority document in the application in which the claim for priority is made. This prohibition does not apply ** where the *>U.S.< application explicitly incorporates **>the foreign priority< document by reference.

>Where a U.S. application as originally filed was in a non-English language and an English translation thereof was subsequently submitted pursuant to 37 CFR 1.52(d), if there is an error in the English translation, applicant may rely on the disclosure of the originally filed non-English language U.S. application to support correction of an error in the English translation document.<

[browse after](#)

KEY: =online business system =fees =forms =help =laws/regulations =definition (glossary)

The Inventors Assistance Center is available to help you on patent matters. Send questions about USPTO programs and services to the USPTO Contact Center (UCC). You can suggest USPTO webpages or material you would like featured on this section by E-mail to the webmaster@uspto.gov. While we cannot promise to accommodate all requests, your suggestions will be considered and may lead to other improvements on the website.



Go to MPEP - Table of Contents

browse before

2163.04 Burden on the Examiner with Regard to the Written Description Requirement - 2100 Patentability

2163.04 Burden on the Examiner with Regard to the Written Description Requirement

The inquiry into whether the description requirement is met must be determined on a case-by-case basis and is a question of fact. *In re Wertheim*, 541 F.2d 257, 262, 191 USPQ 90, 96 (CCPA 1976). A description as filed is presumed to be adequate, unless or until sufficient evidence or reasoning to the contrary has been presented by the examiner to rebut the presumption. See, e.g., *In re Marzocchi*, 439 F.2d 220, 224, 169 USPQ 367, 370 (CCPA 1971). The examiner, therefore, must have a reasonable basis to challenge the adequacy of the written description. The examiner has the initial burden of presenting by a preponderance of evidence why a person skilled in the art would not recognize in an applicant's disclosure a description of the invention defined by the claims. *Wertheim*, 541 F.2d at 263, 191 USPQ at 97.

I. STATEMENT OF REJECTION REQUIREMENTS

In rejecting a claim, the examiner must set forth express findings of fact which support the lack of written description conclusion (see MPEP § 2163 for examination guidelines pertaining to the written description requirement). These findings should:

(A) Identify the claim limitation at issue; and

(B) Establish a *prima facie* case by providing reasons why a person skilled in the art at the time the application was filed would not have recognized that the inventor was in possession of the invention as claimed in view of the disclosure of the application as filed. A general allegation of "unpredictability in the art" is not a sufficient reason to support a rejection for lack of adequate written description. A simple statement such as "Applicant has not pointed out where the new (or amended) claim is supported, nor does there appear to be a written description of the claim limitation '____' in the application as filed." may be sufficient where the claim is a new or amended claim, the support for the limitation is not apparent, and applicant has not pointed out where the limitation is supported.

When appropriate, suggest amendments to the claims which can be supported by the application's written description, being mindful of the prohibition against the addition of new matter in the claims or description. See *Rasmussen*, 650 F.2d at 1214, 211 USPQ at 326.

II. RESPONSE TO APPLICANT'S REPLY

Upon reply by applicant, before repeating any rejection under 35 U.S.C. 112, para. 1, for lack of written description, review the basis for the rejection in view of the record as a whole, including amendments, arguments, and any evidence submitted by applicant. If the whole record now demonstrates that the written description requirement is satisfied, do not repeat the rejection in the next Office action. If the record still does not demonstrate that the written description is adequate to support the claim(s), repeat the rejection under 35 U.S.C. 112, para. 1, fully respond to applicant's rebuttal arguments, and properly treat any further showings submitted by applicant in the reply. When a rejection is maintained, any affidavits relevant to the 35 U.S.C. 112, para. 1, written description requirement, must be thoroughly analyzed and discussed in the next Office action. See *In re Alton*, 76 F.3d 1168, 1176, 37 USPQ2d 1578, 1584 (Fed. Cir. 1996).

browse after

KEY: =online business system =fees =forms =help =laws/regulations =definition (glossary)

The Inventors Assistance Center is available to help you on patent matters. Send questions about USPTO programs and services to the USPTO Contact Center (UCC). You can suggest USPTO webpages or material you would like featured on this section by E-mail to the webmaster@uspto.gov. While we cannot promise to accommodate all requests, your suggestions will be considered and may lead to other improvements on the website.



[Go to MPEP - Table of Contents](#)

[browse before](#)

903.02(b) Scope of a Class - 900 Prior Art, Classification, Search

903.02(b) Scope of a Class

In using any classification system, it is necessary to analyze the organization of the class or classes to be included in the search.

The initial analysis should determine which one or ones of the several types of subject matter (manufacture, art, apparatus, or stock material) are contained in the class being considered.

Further, relative to each type of subject matter, it is necessary to consider each of the various combinations and subcombinations set out below:

Basic Subject Matter Combined with Feature for Some Additional Purpose. The added purpose is in excess of the scope of the subject matter for the class, as defined in the class definition; e.g., adding a sifter to a stone crusher which gives the added function of separating the crushed stone.

Basic Subject Matter Combined with Perfecting Feature. Features may be added to the basic subject matter which do not change the character thereof, but do perfect it for its intended purpose; e.g., an overload release means tends to perfect a stonecrusher by providing means to stop it on overload and thus prevent ruining the machine. However, this perfecting combined feature adds nothing to the basic character of the machine.

Basic Subject Matter. The combination of features necessary and essential to the fundamental character of the subject matter treated; e.g., a stonecrusher requires a minimum number of features as essential before it can function as such.

Subcombinations Specialized to Basic Subject Matter. Each type of basic subject matter may have subcombinations specialized to use therewith; e.g., the crushing element of a stonecrusher.

Subcombinations of General Utility. Each type of basic subject matter may have subcombinations which have utility with other and different types of subject matter; e.g., the machine elements of a stonecrusher. Subcombinations of this character usually are provided for in some general class so that the examiner should determine in each instance where they are classified.

[browse after](#)

KEY: =online business system =fees =forms =help =laws/regulations =definition (glossary)



Go to MPEP - Table of Contents

browse before

707.07(d) Language To Be Used in Rejecting Claims - 700 Examination of Applications



707.07(d) Language To Be Used in Rejecting Claims

Where a claim is refused for any reason relating to the merits thereof it should be "rejected" and the ground of rejection fully and clearly stated, and the word "reject" must be used. The examiner should designate the *statutory basis* for any ground of rejection by express reference to a section of 35 U.S.C. in the opening sentence of each ground of rejection. If the claim is rejected as broader than the enabling disclosure, the reason for so holding should be given; if rejected as indefinite the examiner should point out wherein the indefiniteness resides; or if rejected as incomplete, the element or elements lacking should be specified, or the applicant be otherwise advised as to what the claim requires to render it complete.

See **MPEP § 706.02 (i), (j), and (m)** for language to be used.

Everything of a personal nature must be avoided. Whatever may be the examiner's view as to the utter lack of patentable merit in the disclosure of the application examined, he or she should not express in the record the opinion that the application is, or appears to be, devoid of patentable subject matter. Nor should he or she express doubts as to the allowability of allowed claims or state that every doubt has been resolved in favor of the applicant in granting him or her the claims allowed.

The examiner should, as a part of the first Office action on the merits, identify any claims which he or she judges, as presently recited, to be allowable and/or should suggest any way in which he or she considers that rejected claims may be amended to make them allowable. If the examiner does not do this, then by implication it will be understood by the applicant or his or her attorney or agent that in the examiner's opinion, as presently advised, there appears to be no allowable claim nor anything patentable in the subject matter to which the claims are directed.

IMPROPERLY EXPRESSED REJECTIONS

An omnibus rejection of the claim "on the references and for the reasons of record" is stereotyped and usually not informative and should therefore be avoided. This is especially true where certain claims have been rejected on one ground and other





[Go to MPEP - Table of Contents](#)

construed description

browse before

601.01(d) Application Filed Without All Pages of Specification [R-3] - 600 Parts, Form, and Content of Application

601.01(d) Application Filed Without All Pages of Specification [R-3]

The Office of Initial Patent Examination (OIPE) reviews application papers to determine whether all of the pages of specification are present in the application. If the application is filed without all of the page(s) of the specification, but containing something that can be construed as a written description, at least one drawing figure, if necessary under 35 U.S.C. 113 (first sentence), and, in a nonprovisional application, at least one claim, OIPE will mail a "Notice of Omitted Items" indicating that the application papers so deposited have been accorded a filing date, but are lacking some page(s) of the specification.

B [The mailing of a "Notice of Omitted Items" will permit the applicant to either: *(A)< promptly establish prior receipt in the USPTO of the page(s) at issue (generally by way of a date-stamped itemized postcard receipt (MPEP § 503)); or *(B)< promptly submit the omitted page(s) in a nonprovisional application and accept the date of such submission as the application filing date. An applicant asserting that the page(s) was in fact deposited in the USPTO with the application papers must, within 2 months from the date of the "Notice of Omitted Item(s)", file a petition under 37 CFR 1.53(e) with the petition fee set forth in 37 CFR 1.17*(f)<, along with evidence of such deposit (37 CFR 1.181(f)). The petition fee will be refunded if it is determined that the page(s) was in fact received by the USPTO with the application papers deposited on filing. An applicant desiring to submit the omitted page(s) in a nonprovisional application and accept the date of such submission as the application filing date must, within 2 months from the date of the "Notice of Omitted Item(s)," file any omitted page(s) with an oath or declaration in compliance with 37 CFR 1.63 and 37 CFR 1.64 referring to such page(s) and a petition under 37 CFR 1.182 with the petition fee set forth in 37 CFR 1.17*(f)<, requesting the later filing date (37 CFR 1.181(f)).]

>If an application was filed on or after September 21, 2004, and contains a claim under 37 CFR 1.55 for priority of a prior-filed foreign application, or a claim under 37 CFR 1.78 for the benefit of a prior-filed provisional, nonprovisional, or international application that was present on the filing date of the application, and the omitted portion of the specification was inadvertently omitted from the application and is completely contained in the prior-filed application, applicant may



[Go to MPEP - Table of Contents](#)

[browse before](#)

716.04 Long-Felt Need and Failure of Others [R-2] - 700 Examination of Applications

716.04 Long-Felt Need and Failure of Others [R-2]

>

I. < THE CLAIMED INVENTION MUST SATISFY A LONG-FELT NEED WHICH WAS RECOGNIZED, PERSISTENT, AND NOT SOLVED BY OTHERS

Establishing long-felt need requires objective evidence that an art recognized problem existed in the art for a long period of time without solution. The relevance of long-felt need and the failure of others to the issue of obviousness depends on several factors. First, the need must have been a persistent one that was recognized by those of ordinary skill in the art. *In re Gershon*, 372 F.2d 535, 539, 152 USPQ 602, 605 (CCPA 1967) ("Since the alleged problem in this case was first recognized by appellants, and others apparently have not yet become aware of its existence, it goes without saying that there could not possibly be any evidence of either a long felt need in the . . . art for a solution to a problem of dubious existence or failure of others skilled in the art who unsuccessfully attempted to solve a problem of which they were not aware."); *Orthopedic Equipment Co., Inc. v. All Orthopedic Appliances, Inc.*, 707 F.2d 1376, 217 USPQ 1281 (Fed. Cir. 1983) (Although the claimed invention achieved the desirable result of reducing inventories, there was no evidence of any prior unsuccessful attempts to do so.).

Second, the long-felt need must not have been satisfied by another before the invention by applicant. *Newell Companies v. Kenney Mfg. Co.*, 864 F.2d 757, 768, 9 USPQ2d 1417, 1426 (Fed. Cir. 1988) (Although at one time there was a long-felt need for a "do-it-yourself" window shade material which was adjustable without the use of tools, a prior art product fulfilled the need by using a scored plastic material which could be torn. "[O]nce another supplied the key element, there was no long-felt need or, indeed, a problem to be solved".)

Third, the invention must in fact satisfy the long-felt need. *In re Cavanagh*, 436 F.2d 491, 168 USPQ 466 (CCPA 1971).

>



use w. 2164.05 (a)

[Go to MPEP - Table of Contents](#)

[browse before](#)

2141.03 Level of Ordinary Skill in the Art [R-2] - 2100 Patentability

2141.03 Level of Ordinary Skill in the Art [R-2]

FACTORS TO CONSIDER IN DETERMINING LEVEL OF ORDINARY SKILL

"Factors that may be considered in determining level of ordinary skill in the art include (1) the educational level of the inventor; (2) type of problems encountered in the art; (3) prior art solutions to those problems; (4) rapidity with which innovations are made; (5) sophistication of the technology; and (6) educational level of active workers in the field." *Environmental Designs, Ltd. v. Union Oil Co.*, 713 F.2d 693, 696, 218 USPQ 865, 868 (Fed. Cir. 1983), *cert. denied*, 464 U.S. 1043 (1984).

The "hypothetical 'person having ordinary skill in the art' to which the claimed subject matter pertains would, of necessity have the capability of understanding the scientific and engineering principles applicable to the pertinent art." *Ex parte Hiyamizu*, 10 USPQ2d 1393, 1394 (Bd. Pat. App. & Inter. 1988) (The Board disagreed with the examiner's definition of one of ordinary skill in the art (a doctorate level engineer or scientist working at least 40 hours per week in semiconductor research or development), finding that the hypothetical person is not definable by way of credentials, and that the evidence in the application did not support the conclusion that such a person would require a doctorate or equivalent knowledge in science or engineering.).

References which do not qualify as prior art because they postdate the claimed invention may be relied upon to show the level of ordinary skill in the art at or around the time the invention was made. *Ex parte Erlich*, 22 USPQ 1463 (Bd. Pat. App. & Inter. 1992).

>Moreover, documents not available as prior art because the documents were not widely disseminated may be used to demonstrate the level of ordinary skill in the art. For example, the document may be relevant to establishing "a motivation to combine which is implicit in the knowledge of one of ordinary skill in the art." *National Steel Car Ltd. v. Canadian Pacific Railway Ltd.*, 357 F.3d 1319, 1338, 69 USPQ2d 1641, 1656 (Fed. Cir. 2004)(holding that a drawing made by an engineer that was not prior art may nonetheless "be used to demonstrate a motivation to combine implicit in the knowledge of one of ordinary skill in the art").<

SPECIFYING A PARTICULAR LEVEL OF SKILL IS NOT NECESSARY WHERE THE PRIOR ART ITSELF REFLECTS AN APPROPRIATE LEVEL

If the only facts of record pertaining to the level of skill in the art are found within the prior



[Go to MPEP - Table of Contents](#)

[browse before](#)

§ 1.125 Substitute specification. - PATENT RULES

§ 1.125 Substitute specification.

(a) If the number or nature of the amendments or the legibility of the application papers renders it difficult to consider the application, or to arrange the papers for printing or copying, the Office may require the entire specification, including the claims, or any part thereof, be rewritten.

(b) Subject to § 1.312, a substitute specification, excluding the claims, may be filed at any point up to payment of the issue fee if it is accompanied by a statement that the substitute specification includes no new matter.

(c) A substitute specification submitted under this section must be submitted with markings showing all the changes relative to the immediate prior version of the specification of record. The text of any added subject matter must be shown by underlining the added text. The text of any deleted matter must be shown by strike-through except that double brackets placed before and after the deleted characters may be used to show deletion of five or fewer consecutive characters. The text of any deleted subject matter must be shown by being placed within double brackets if strike-through cannot be easily perceived. An accompanying clean version (without markings) must also be supplied. Numbering the paragraphs of the specification of record is not considered a change that must be shown pursuant to this paragraph.

(d) A substitute specification under this section is not permitted in a reissue application or in a reexamination proceeding.

[48 FR 2712, Jan. 20, 1983, effective Feb. 27, 1983; revised, 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997; paras. (b)(2) and (c) revised, 65 FR 54604, Sept. 8, 2000, effective Nov. 7, 2000; paras. (b) and (c) revised, 68 FR 38611, June 30, 2003, effective July 30, 2003]

[browse after](#)



[Go to MPEP - Table of Contents](#)

browse before

608.01(a) Arrangement of Application [R-3] - 600 Parts, Form, and Content of Application

608.01(a) Arrangement of Application [R-3]

37 CFR 1.77 Arrangement of application elements.

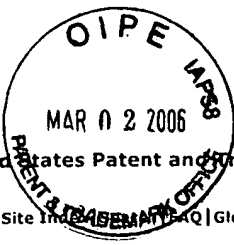
(a) The elements of the application, if applicable, should appear in the following order:

- (1) Utility application transmittal form.
- (2) Fee transmittal form.
- (3) Application data sheet (see § 1.76).
- (4) Specification.
- (5) Drawings.
- (6) Executed oath or declaration.

(b) **>The specification should include the following sections in order:

- (1) Title of the invention, which may be accompanied by an introductory portion stating the name, citizenship, and residence of the applicant (unless included in the application data sheet).
- (2) Cross-reference to related applications (unless included in the application data sheet).
- (3) Statement regarding federally sponsored research or development.
- (4) The names of the parties to a joint research agreement.
- (5) Reference to a "Sequence Listing," a table, or a computer program listing appendix submitted on a compact disc and an incorporation-by-reference of the material on the compact disc (see § 1.52(e)(5)). The total number of compact discs including duplicates and the files on each compact disc shall be specified.
- (6) Background of the invention.
- (7) Brief summary of the invention.
- (8) Brief description of the several views of the drawing.
- (9) Detailed description of the invention.
- (10) A claim or claims.
- (11) Abstract of the disclosure.
- (12) "Sequence Listing," if on paper (see §§ 1.821 through 1.825).

*I know that,
parts of the
specification which
include the Description.*



United States Patent and Trademark Office

Home | Site Index | Search | Glossary | Guides | Contacts | eBusiness | eBiz alerts | News | Help

PATENTS

Patents >

Go to MPEP - Table of Contents

browse before

35 U.S.C. 120 Benefit of earlier filing date in the United States. - Patent Laws

35 U.S.C. 120 Benefit of earlier filing date in the United States.

An application for patent for an invention disclosed in the manner provided by the first paragraph of **section 112** of this title in an application previously filed in the United States, or as provided by **section 363** of this title, which is filed by an inventor or inventors named in the previously filed application shall have the same effect, as to such invention, as though filed on the date of the prior application, if filed before the patenting or abandonment of or termination of proceedings on the first application or on an application similarly entitled to the benefit of the filing date of the first application and if it contains or is amended to contain a specific reference to the earlier filed application. No application shall be entitled to the benefit of an earlier filed application under this section unless an amendment containing the specific reference to the earlier filed application is submitted at such time during the pendency of the application as required by the Director. The Director may consider the failure to submit such an amendment within that time period as a waiver of any benefit under this section. The Director may establish procedures, including the payment of a surcharge, to accept an unintentionally delayed submission of an amendment under this section.

(Amended Nov. 14, 1975, Public Law 94-131, sec. 9, 89 Stat. 691; Nov. 8, 1984, Public Law 98-622, sec. 104(b), 98 Stat. 3385; Nov. 29, 1999, Public Law 106-113, sec. 1000(a)(9), 113 Stat. 1501A-563 (S. 1948 sec. 4503(b)(1)).)

browse after

KEY: =online business system (\$) =fees =forms =help =laws/regulations =definition (glossary)

The Inventors Assistance Center is available to help you on patent matters. Send questions about USPTO programs and services to the USPTO Contact Center (UCC). You can suggest USPTO webpages or material you would like featured on this section by E-mail to the webmaster@uspto.gov. While we cannot promise to accommodate all requests, your suggestions will be considered and may lead to other improvements on the website.

[| HOME](#) | [| SITE INDEX](#) | [| SEARCH](#) | [| eBUSINESS](#) | [| HELP](#) | [| PRIVACY POLICY](#)

Last Modified: 12/07/2005 06:48:59

Go to MPEP - Table of Contents



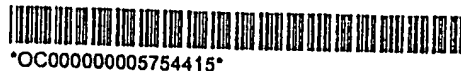
UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

APPLICATION NUMBER	FILING DATE	GRP ART UNIT	FIL FEE REC'D	ATTY. DOCKET NO	DRAWINGS	TOT CLAIMS	IND CLAIMS
60/254,901	12/12/2000		75		3		

Gary Carlton Johnson
P O Box # 10855
Columbus, OH 43201

FILING RECEIPT



OC000000005754415

Date Mailed: 02/12/2001

Receipt is acknowledged of this provisional Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. If an error is noted on this Filing Receipt, please write to the Office of Initial Patent Examination's Customer Service Center. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the PTO processes the reply to the Notice, the PTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).

Applicant(s)

Gary Carlton Johnson, Columbus, OH ;

Continuing Data as Claimed by Applicant

Foreign Applications

If Required, Foreign Filing License Granted 02/09/2001

**** SMALL ENTITY ****

Title

Johnson-positive action continuous traction (p.a.c.t) vehicle, differential

Preliminary Class

Data entry by : BUTLER, DAVINA

Team : OIPE

Date: 02/12/2001



Patent Applications

[Patent Application Information \(PAIR\)](#)
[PAIR Frequently Asked Questions](#)
[PAIR Help](#)
[Search Class/Subclass/GAU](#)
• [Manual of Patent Classification](#)
[Secure eBusiness](#)
• [Patent EBC](#)
[Customer Numbers](#)
[Digital Certificates](#)
• [Electronic Filing](#)
• [Private PAIR](#)
[Glossary](#)
[Patent eBusiness Support/Help](#)
[System Alerts](#)
[Viewer Download: PDF](#)

Patent Application Information Retrieval

Select Search
Method:

Enter
Number:

Application Number

SUBMIT

[Order Certified Application As Filed](#)
[Order Certified File Wrapper](#)
[View Order List](#)

Patent Information

[About Patents](#)
[Manual of Patent Examining Procedure](#)
[Patent Assistance Center](#)
• [Employee Locator Search](#)
[Valid Location Codes](#)
[Telephone Directory](#)
• [Fees](#)
[Pay online \(RAM\)](#)
[Inventor Resources](#)
[News, Federal Register & OG Notices](#)
[PTDL Program - libraries near you](#)
[Registered Patent Attorneys & Agents](#)

10/021,656 Johnson - positive action continuous traction (p.a.c.t) vehicle differential

[Application Data](#) [Transaction History](#) [Image File Wrapper](#) [Continuity Data](#) [Published Documents](#) [Publication Dates](#) [Address & Attorney/Agent](#)

Parent Continuity Data

Description	Parent Number	Parent Filing or 371(c) Date	Parent Status	Patent Number
This application Claims Priority from Provisional Application	<u>60/254,901</u>	12-12-2000	Pending	-

Child Continuity Data

No Child Continuity Data Found

Patent Searches

[Search Patents/Patent Applications - full text & images](#)
[How to View Patent Images](#)
[Search Assignments - ownership](#)
[Search International Patents](#)
[Other Search Resources & Tips](#)
[Sequence Searches \(biotech\)](#)
[Software for Sequence Listings](#)

[Order Copies & Publications](#)
[Products & Services](#)

Other

[Copyrights](#)
[Policy & Law](#)
[Reports](#)
[Trademarks](#)

The Patent Electronic Business Center is available to assist with PAIR questions at (86 217-9197 (toll free) or EBC@uspto.gov.

**This Page is Inserted by IFW Indexing and Scanning
Operations and is not part of the Official Record**

BEST AVAILABLE IMAGES

Defective images within this document are accurate representations of the original documents submitted by the applicant.

Defects in the images include but are not limited to the items checked:

- ☐ **BLACK BORDERS**
- ☐ **IMAGE CUT OFF AT TOP, BOTTOM OR SIDES**
- ☐ **FADED TEXT OR DRAWING**
- ☐ **BLURRED OR ILLEGIBLE TEXT OR DRAWING**
- ☐ **SKEWED/SLANTED IMAGES**
- ☐ **COLOR OR BLACK AND WHITE PHOTOGRAPHS**
- ☐ **GRAY SCALE DOCUMENTS**
- ☐ **LINES OR MARKS ON ORIGINAL DOCUMENT**
- ☒ **REFERENCE(S) OR EXHIBIT(S) SUBMITTED ARE POOR QUALITY**
- ☐ **OTHER:** _____

IMAGES ARE BEST AVAILABLE COPY.

As rescanning these documents will not correct the image problems checked, please do not report these problems to the IFW Image Problem Mailbox.